IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1247 of 2005

Shri Bharatkumar Modi and Ors...Applicants

V/s

State of Maharashtra and Anr ...Respondents

Ms. S.D.Khot for Applicants

Mr.D.P.Adsule, A.P.P. for State

CORAM:SMT.V.K.TAHILRMANI,J.

DATED:3rd August 2005

P.C.:-

1. Heard the learned advocate for the Applicants, and the learned A.P.P. for the State.

2. The Applicants have prayed for quashing of complaint i.e. Complaint No.1386/S/03 which is pending in the Court of learned Additional Metropolitan Magistrate, 4th Court, Girgaum, Bombay. In the said case process has been issued against the Applicants under Section 138 read with 141 of Negotiable Instrument Act.

3. The learned Advocate for the Applicants has submitted

that the learned Magistrate erred in issuing process against the Applicants. She has further submitted that if order issuing process is quashed the proceedings in respect of Case No.1386/S/03 would come to an end.

4. In the present case the Applicants had preferred an application before the learned Magistrate for recalling of process. The learned Magistrate rejected the same in view of decision of Apex Court in the case of Adalat Prasad V/s Rooplal Jindal and Ors. **2004 (4) Mh.L.J. 274** In view of the decision of the Supreme Court in the case of Adalat Prasad (supra) it is clear that the Magistrate does not have the power to recall the process. In this view of the matter no fault can be found with the order of the learned Magistrate rejecting the application for recall of process.

5. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No. 213 of 2005 and order dated 21st June 2005 passed in Criminal application NO.550 of 2005, the Applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the Petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the Petitioner to prefer revision before the concerned Sessions Court. The

learned Advocate for the Petitioner states that the necessary revision would be preferred within a period of four weeks from toady. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. It is made clear that the revision shall be preferred in respect of impugned order of the Magistrate issuing process against the Applicants and not in respect of order of the Magistrate dated 16-10-2004 rejecting the application for recalling process.

7. On the necessary revision being preferred by the Petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. Office to issue an authenticated copy of this order to the parties.

9. Petition is disposed of.

(SMT.V.K.TAHILRAMANI,J.)